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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Appln. of: L. Jeffrey Kapner III, et al.	Art Unit: 2623
Serial No.: 10/035,763	Examiner: David R. O'Steen
Filing Date: 12/21/2001	Confirmation No.: 3826
For: SYSTEM AND METHOD FOR SELECTING A PAY PER VIEW PROGRAM TO BE TRANSMITTED TO A PROGRAM RECEIVER	Docket No.: K35A0882

PRE-APPEAL BRIEF REQUEST FOR REVIEW

MAIL STOP AF  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Examiner,

Applicants request a pre-appeal review of the legal and factual basis of the rejections in the 01/24/2007 Final Office Action. No amendments are being filed with this request, and this request is being filed with a Notice of Appeal.

The review is requested for the reason(s) stated on the following pages.

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### **SUMMARY OF CLAIMED SUBJECT MATTER**

FIG. 2 shows a method of selecting a pay per view program to be transmitted to a program receiver, the method comprising:

- (Step 100) obtaining a schedule of pay per view programs at the program receiver, each of the pay per view programs having a title and a plurality of transmission times;
- (Step 102) generating a menu comprising the titles of at least one pay per view program, based on the schedule;
- (Step 104) providing the menu to a display device for display to a user;
- (Step 106) receiving from the user a selection by title of the pay per view program from the menu to be received by the program receiver; and
- (Step 108) the program receiver determining a potential transmission time of the pay per view program to be received by the program receiver based on the plurality of transmission times in the schedule of pay per view programs.

### **GROUND OF REJECTION TO BE REVIEWED**

Claims 1 and 10 stand rejected under 35 USC §103(a) as unpatentable over Schlarb (US 2004/0078823) in view of Haddad (US 6,072,982).

Claims 2, 5, and 7-9 stand rejected under 35 USC §103(a) as unpatentable over Schlarb (US 2004/0078823) in view of Haddad (US 6,072,982) and further in view of LaJoie (US 5,850,218).

Claims 11, 14-16, and 18-21 stand rejected under 35 USC §103(a) as unpatentable over Russo (US 6,025,868) in view of Shah-Nazaroff (US 6,157,377) and further in view of Haddad (US 6,072,982).

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## I. THE ISSUE UNDER 35 U.S.C. §103(a)

- A. The rejection should be reversed because the relied upon prior art neither discloses or suggests a program receiver determining a potential transmission time of a pay per view program

Regarding claim 1, neither Schlarb nor Haddad discloses or suggests a program receiver determining a potential transmission time of a pay per view program to be received by the program receiver based on a plurality of transmission times in a schedule of pay per view programs. In contrast, Schlarb teaches an end user determining the transmission time of a program by selecting the program from a program guide (see paragraphs [0006]-[0007] and FIG. 1), and Haddad teaches a program provider or "Distribution Center 100" determining the transmission time of a program (see FIG. 1 and col. 7, line 25 to col. 8, line 38).

On page 2 of the final office action, the examiner asserts that Haddad discloses (col. 6, lines 38-62) that the subscriber terminal requests and receives authorization for program segment downloads. The examiner then interprets this excerpt to mean that the authorization somehow ensures that "the recording device records the proper download *at the proper time*." However, the mere fact that Haddad discloses a subscriber terminal that requests a particular program to be received from a program provider does not mean that the subscriber terminal determines the potential transmission time for the selected program. Nowhere does Haddad disclose or suggest this limitation.

In contrast, Haddad explicitly discloses a completely different method wherein the subscriber terminal provides a "variable time allowance interval" to the program provider which specifies a time interval in which the program must be provided. The program provider evaluates the variable time allowance interval to determine whether a pending order can be accepted or rejected (col. 9, lines 1-2). In particular, the program

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provider "determines the latest time that delivery can be completed for the requested variable time allowance interval" (col. 9, lines 56-57) and "inserts the program segment into the schedule at the latest possible time" (col. 10, lines 5-7). Further, "when trying to insert the program segment into the schedule, [the program provider] check[s] for conflict with other program segments for the same customer at the same time, and if there is a conflict, insert[s] at the latest possible time when there is no conflict" (col. 10, lines 8-13).

Therefore, Haddad teaches that the program provider selects the transmission time for a program segment, including to select a transmission time that does not conflict with the transmission times for other program segments transmitted to the same customer. Nowhere does Haddad disclose or suggest that the program receiver determine a potential transmission time of a pay per view program to be received by the program receiver based on a plurality of transmission times in a schedule of pay per view programs. Further, the examiner appears to agree with this interpretation of Haddad on page 5 of the final office action when stating that "Schlarb and Haddad *do not disclose* that the determining [if an availability status of a content delivery path is available at a predetermined time prior to the potential transmission time] is done at the program receiver." The rejection of claim 1 should be withdrawn, as well as the rejection of claims 11 and 18 for at least the reasons set forth above.

Regarding claim 2, the examiner concedes that neither Schlarb nor Haddad disclose "determining at the program receiver if an availability status of a content delivery path is available at a predetermined time prior to the potential transmission time." The examiner asserts that the combination of Schlarb and Haddad could be modified in view of LaJoie to arrive at the claimed invention. However, nothing in LaJoie discloses or suggests any motivation for this modification. Further, modifying the combination of Schlarb and Haddad in this manner would frustrate the primary purpose

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of Haddad (i.e., to resolve conflicts at the program provider). The rejection under 35 USC §103 is therefore not proper and should be withdrawn.

**CONCLUSION**

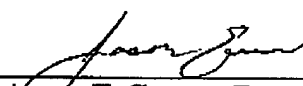
Withdrawal of the rejections is respectfully requested.

The Commissioner is hereby authorized to charge payment of any required fees associated with this Communication or credit any overpayment to Deposit Account No. 23-1209.

Respectfully submitted,

Date: February 27, 2007

By: \_\_\_\_\_

  
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